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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,819	05/09/2001	David C. Hamilton	GAC-1972DIV	3565

7590

07/13/2004

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EXAMINER

WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/851,819

Applicant(s)

HAMILTON, DAVID C.

Examiner

John J. Wilson

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (4097993) in view of Wood et al (5863360). Andrews shows a maxillary arch wire having a radius of curvature selected from 1.033 in (26.22 mm), 1.08 in (27.41 mm) and 1.125 in (28.55 mm), see radius of curvature R in table at column 5, lines 1-28. Andrews also shows a mandibular arch wire having a radius of curvature selected from .92 in (23.35 mm), .985 in (24.31 mm) and .995 in (25.25 mm). The exact size used is an obvious matter of choice in size, a well known parameter, to one of ordinary skill in the art in order to best match the wire to the patient's size and needs. Andrews does not state the material used to form the arch wire nor the shape of the wire. Wood teaches making arch wires from super elastic metal, column 5, lines 59-61, and that such wires may have a round or square shape, column 6, lines 1-10. It would be obvious to one of ordinary skill in the art to modify Andrews to include the use of a round or square super elastic arch wire as shown by Wood in order to apply the desired forces to the teeth. As to claim 43, to choose a size for the second arch that is matched to the first would have been obvious to one of ordinary skill in the art looking to obtain the best fit because it is well known that the size of the two jaws will match. The

Art Unit: 3732

manner of calculating the sizes used is an obvious matter of choice in process steps in an article claim.

Specification

The abstract of the disclosure is objected to because it is directed to another invention and must be changed to reflect the currently claimed invention. Correction is required. See MPEP § 608.01(b).

Response to Arguments

Applicant's arguments filed April 22, 2004 have been fully considered but they are not persuasive. The claims are directed to an article or product. Claimed limitations to a process used to derive the product are not given patentable weight because in a product claim, it is only necessary to show the final product regardless of the process used to obtain it. With respect to the specific sizes claimed, it is well known in the art to match the size to a patient's arch, therefore, the specific sizes used are properly held to be obvious to one of ordinary skill in the art looking to find the best match to a patient's arch.

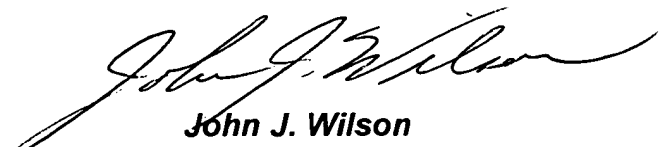
With respect to the Abstract, applicant indicated that one was attached to the amendment and a page titled as an Abstract was attached, however, the page was blank except for the title.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.


John J. Wilson
Primary Examiner
Art Unit 3732

jjw
July 9, 2004
Fax (703) 308-2708
Work Schedule: Monday through Friday, Flex Time